

March 20, 2003

Ms. Gayle Sweigert, Manager  
Air Quality Analysis Section  
Planning and Technical Support Division  
Air Resources Board  
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Re: **CCEEB's Comments on ARB's March 5, 2003 Draft  
Amendments to ARB's Transport Mitigation  
Regulation**

Dear Ms. Sweigert:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor, and public leaders that works to advance policies that both protect the environment and allow California's economy to grow. CCEEB recognizes the challenges that the Air Resources Board ("ARB") and the air districts face in planning for attainment of the State ambient air quality standards and in assessing and addressing the transport contributions from upwind districts. That said, CCEEB has **strong concerns** regarding staff's March 5, 2003 draft amendments to ARB's Transport Mitigation Regulation (the "Draft Amendments"). Following are CCEEB's comments.

**1. Background Information**

Under the California Clean Air Act (the "CCAA" or the "Act"), an air district in a nonattainment area is required to develop an attainment plan that achieves 5 percent per year reductions in emissions of each nonattainment pollutant. The Act authorizes districts to use an alternative emissions reduction strategy in cases where the district has included every feasible measure in the plan but is unable to achieve the 5-percent reduction. Our understanding is that most, if not all, districts are complying with this part of the Act by implementing all feasible measures. The Act requires the districts to update their plans every three years, and the districts review and update their all feasible measures as part of that triennial review process.

## 2. Summary of Staff's March 5, 2003 Proposal on All Feasible Measures

Staff's primary proposal regarding all feasible measures would apply to the following upwind districts/areas:

Broader Sacramento Area  
San Francisco Bay Area Air Basin  
San Joaquin Valley Air Basin  
South Central Coast Air Basin  
South Coast Air Basin

The proposal would:

- A) require these upwind districts to adopt and implement "all feasible measures" as expeditiously as practicable;
- B) set forth a new definition of "all feasible measures" for the upwind districts that are subject to this regulation (i.e., define "all feasible measures" as "emission reduction measures for air pollution sources under a district's authority that achieve the maximum degree of reduction of emissions of ozone precursors taking into account technology considerations and economic impacts"); and
- C) require these **upwind** districts to **go beyond the state-law mandated triennial review process** and **state-law mandated** all feasible measures requirement and go through **an additional extensive public review process each year** regarding whether the plan includes all feasible measures.

## 3. CCEEB's Concerns

### A. **The All Feasible Measures Program is a Proposal for an Unnecessary New Program.**

Under the existing law and regulation, air districts update their CCAA plans every three years and include all feasible measures at that time. As part of the triennial review, ARB reviews the districts' plans for deficiencies and thereby has a strong hand in the district's determination of all feasible measures. A new annual review program is not needed.

### B. **The All Feasible Measures Proposal Unnecessarily Expands the Existing "All Feasible Measures" Process in Times when Resources Need to be Used Efficiently.**

Planning processes are an important part of attainment programs, but planning processes are expensive and time-intensive for the air districts, ARB and stakeholders. Districts

already update the all feasible measures determination every three years. This proposal would require:

- 1) Each covered district to **review its attainment plan** by November 1 of each year and make a finding as to whether it meets the all feasible measures requirement;
- 2) Each covered district to provide a **public comment period** on that finding;
- 3) Each covered district to review the public comments and make a final finding;
- 4) Each covered district to submit to ARB by December 31 of each year either a finding that the plan includes the required measures or a list of the measures that will be included;
- 5) ARB, within 60 days of that submittal, to **review the finding** and notify the district of any additional measures that would have to be included; and
- 6) Each covered district, within 180 days of receiving the notification from ARB, to **amend the attainment plan** and include the identified measures.

This is a proposal to add an extensive annual process onto a triennial review process that is already extensive and covers the need to update the plans. (The last step alone is a huge process.) Given that new sources have to meet Best Available Control technology requirements and existing sources can not practically be retrofitted every three years, let alone every year, the proposal would offer little air quality improvement – particularly when compared against the large amount of resources this new program could require. **The proposal is simply going overboard to expand the process in times when resources need to be used efficiently.**

**C. No One Knows What Impact this Proposal Would Have on Transport. It May be Counterproductive to Achieving Progress toward the State Standards.**

Section 39610 of the California Health and Safety Code (“H&SC”) provides that ARB’s mitigation requirements must be **commensurate with the level of contribution** from the upwind area to the downwind. Staff indicated in the February workshop that it is difficult to say what impact this proposal would have on transport. Staff has suggested that the proposal should go forward because the districts are far from attainment of the State standards. We note, however, that the existing all feasible measures requirement and triennial process, combined with the BACT requirements for new sources, already addresses the need to ensure that districts update their plans to include measures that become feasible. We suggest that this particular measure could be **counterproductive** in that it will take time/resources away at the districts and ARB for running extensive processes annually that could have been devoted to the development of new and creative air quality improvement strategies and to more technical work on transport assessment.

**D. The Proposed Definition of “All Feasible Measures” is Highly Problematic.**

Even if one assumed that growing the triennial process into an annual measures review process made sense, the proposed basis of the process, the definition of “all feasible measures” is highly problematic. Staff is suggesting the following new definition:

“emission reduction measures for air pollution sources under a district’s authority that achieve the **maximum degree of reduction** of emissions of ozone precursors taking into account **technology considerations** and **economic impacts**.”

Under this definition, one might argue that a measure met the definition even it had only been tested on a prototype basis (as opposed to in practice) and even if it was not cost-effective. This approach runs counter to the approach of the CCAA. For example, the CCAA explicitly requires the districts to consider cost-effectiveness, incremental cost-effectiveness (for BARCT), technological feasibility and other factors locally. [e.g., H&SC 40913(b) and H&SC 40922(b).] Our thinking is that it does not make sense to apply a new definition and different approach for “all feasible measures” to upwind areas.

#### **1. Districts Must be Allowed to Consider Local and Regional Factors.**

As noted above, the CCAA requires each air district to consider cost effectiveness and other factors for their local area. In its 1999 report entitled Identification of Performance Standards for Existing Stationary Sources: A Resource Document, ARB indicated that its philosophy was that:

“feasible” must ultimately be defined by **each district** based on technological, social, environmental, economic and energy factors that prevail **in the district**, along with the **resources realistically available** to the district to adopt, implement and enforce the measures.”

CCEEB agrees with that philosophy. **The March 5, 2003 proposal would steer far from that philosophy (and the local factors approach of the CCAA) and adopt a unique definition of (and requirement for) all feasible measures just for upwind districts with no consideration of cost-effectiveness or local factors as required by the CCAA.** CCEEB acknowledges that ARB plays an important role in making information about measures available and reviewing the districts’ attainment plans, but, as noted by ARB in 1999, the definition of “feasible” should be defined by each district.

#### **E. The May Timeframe for Board Adoption is Unrealistic Given the Problems Associated with the Current Draft Proposal.**

CCEEB recognizes that the Board wants staff to move expeditiously to address transport, but that is not reason to jam a proposal through in a short few months when there are major questions about what real benefit the proposal would provide and what workload and costs the proposal would create. We urge staff to reconsider the timeframe for amending this regulation.

#### **4. Closing**

CCEEB realizes that staff sincerely wants to address transport and recognizes that this is a complex and challenging area. We are committed to working with ARB to find effective solutions in this area, and we appreciate your consideration of these comments. If you have any questions, please contact me at (916) 442-4249.

Sincerely,

[Original signed by]

Cindy K. Tuck  
General Counsel

cc: Ms. Lynn Terry  
Mr. Robert Fletcher